92-503

Supreme Court, U.S.
FILED
SEP 4 1992
OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

- - - - -

JOSEPHINE GUAGLIERI,
Petioner,

VS.

THE STATE OF NEW JERSEY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF NEW JERSEY -
APPELLATE DIVISION

= = = = =

PETITION FOR WRIT OF CERTIORARI

Josephine Guaglieri
Pro Se
P. O. Box 599
East Hanover, New Jersey
07936
201 - 994 - 1668

QUESTIONS PRESENTED

In a state criminal prosecution, a trial court judge, Vincent J. McMann, J.M.C., concluded beyond a reasonable doubt, petitioner guilty of shoplifting her own coat, even after she identified her coat in detail by describing an imperfection in the garment. He also concluded beyond a reasonable doubt, even though there were no eyewitnesses other than the accuser, no video tape to corroborate the accuser's claim of shoplifting, no instrument with fingerprints supposedly having removed a sensamatic tag, the petitioner guilty of shoplifting. Has not the court departed from governing legal principles and unjustifiably created a miscarriage of justice?

. In a state criminal prosecution, is not the petitioner entitled to a change of venue out of county to a larger county from where accused, eliminating all prejudices in connection with close proximity of where the alleged crime took place, and small town thinking and attitudes with respect to such? Petitioner vigorously sought a change of venue, and, the request for a change of venue was tossed from township to township to appease petitioner, but they would not let it leave the county, for the verdict was predetermined. Is this not a miscarriage of justice?

. In a state criminal prosecution is not the petitioner entitled to a change of venue out of county where accused when her ex-attorney,

Michael Murphy, is the prosecutor in the Superior Court of Morris County where petitioner's appeal is being heard? Petitioner fired Mr. Murphy for suspicion of fraud, conspiracy to obstruct justice, political bribery within the system, and, failure to take the necessary steps to provide due process of law for his client. From the inception of the alleged accusation, the weight of the system geared itself against petitioner, and, Michael Murphy was a willing participant. They banded together to oppose petitioner on every level.

. The accuser, Jack Donnelly, employed by the department store from where he alleges a coat was shoplifted, stated petitioner was wearing a brown jacket when first observed, then left the store and came back without a jacket on in order to shoplift. If this is to be perceived as a fact and truth as so stated by the accuser in the police report, why was there no further investigation by the Rockaway Township Police to locate his jacket in order to corroborate the accuser's story? Where is the burden of proof?

. If the accuser, Jack Donnelly, fails to give an accurate description of a coat he alleged is being shoplifted from the department store he is employed with, both on the complaint form and the police report, is this not insufficient evidence? Petitioner's coat was an Andrew Marc black leather coat purchased in New York City.

Mr. Donnelly described the coat as being a brown La Nouvell Renaissance leather coat. The label inside petitioner's coat is an Andrew Marc. (emphasis added to point out discrepancy)

6. On appeal in the Superior Court of New Jersey - Morris County, Judge Daniel S. Coburn, presiding, petitioner made it a point to show the discrepancy and inaccuracy mentioned in question five (5), elaborating on the description of the coat given by Jack Donnelly, the accuser. Does a judge have the right to make a mockery of this , use manipulative words, and deliberately attempt to cover up and suppress the evidence and downplay the inaccuracy? Is this not a miscarriage of justice? 18 U.S.C. 1001.

7. Since the denial of Petition for Certification, with costs in the Supreme Court of New Jersey, (Appendix A) petitioner has been harassed by the Municipal Court of Chatham where the case was tried for the fine and court costs totaling $455.00, and, was told she had to start her probation, negating the fact they were notified appeal was being made to the United States Supreme Court. Petitioner fowarded the $455.00 immediately. However, there is a discrepancy with regard to the probation. According to the judgement handed down by Judge Daniel S. Coburn of the Superior Court of New Jersey - Morris County the probation period did remain 6|26|90 - 7|26|91, and, is over. (Appendix B)

The Superior Court of New Jersey-Appellate Division decision validifies this fact. (Appendix C) You will note no mention is made of probation, because in their minds too, the probationary period is over. Still the harrassment continues against petitioner as they endeavor to enforce this issue. Is this not a continuance of miscarriage of justice?

LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGEMENT IS SOUGHT TO BE REVIEWED

. Daniel S. Coburn, J.S.C.
Morris County Superior Court of New Jersey
P. O. Box 900
Courthouse
Morristown, New Jersey 07963-0900

. Vincent J. McMann, J.M.C.
Municipal Court-Borough of Chatham
54 Fairmount Avenue
Chatham, New Jersey 07928

. Superior Court of New Jersey
Appellate Division
CN 006
Trenton, New Jersey 08625

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i-iiii
List of all parties to the proceeding in the court whose judgement is sought to be reviewed	iiiii
TABLE OF AUTHORITIES CITED	iiiiii-iiiiiii
OPINION BELOW	1
JURISDICTION	1
STATUATORY PROVISIONS INVOLVED	2
CONSTITUTIONAL PROVISION INVOLVED	2-3
STATEMENT OF FACTS	4
REASONS FOR GRANTING WRIT	5-7
CONCLUSION	7

APPENDIX

Denial of Petition for Certification by the Supreme Court of New Jersey	Appendix A
Order-Daniel S. Coburn, J.S.C.	Appendix B
Opinion of the Appellate Division of New Jersey	Appendix C

TABLE OF AUTHORITIES

CASES

Miles vs. United States
103 U.S. 304 26 L.Ed. 481 (1880)

Davis vs. United States
160 U.S. 469, 16 S. CT. 353, 40 L.Ed.
(1895)

Holt vs. United States
218 U.S. 245, 31 S. CT. 2, 54 L.Ed.
1021 1910. 397 U.S. 358, 90 S. CT. 1068,
25 L.Ed. 2nd 368 (1970)

Pettibone vs. United States
148 U.S. 197, 13 S. CT. 542, 37 L.Ed.
419 (1893)

Commonwealth vs. Hunt
4 Mete, 111 (Mass. 1842)

Ianelli vs. United States
420 U.S. 770, 95 S. CT. 1284, 43 L.Ed.
2d 616 (1975)

Interstate Circuit vs. United States
306 U.S. 208, 59 S. CT. 467,
83 L.Ed. 610 (1939)

Cousens, Agreement as an Element of Conspiracy
23 VA. L. Rev 989 (1937)

Regina vs. Murphy
172 Eng. Rep. 502 (1837)

Griffin vs. STate
248 Ark. 1223, 455 S.W. 2d 882 (1970)

McDonald vs. United States
89 F. 2d 128 (8th Cir. 1937)

Laska vs. United States
82 F. 2d 672 (10th Cir. 1936)

Skelly vs. United States
76F. 2d 483 (10th Cir. 1935)

RULES AND STATUTES

28 U.S.C. 1254 (1)

18 U.S,C. 1001

OTHER SOURCES

Fifth Amendment of the United States Constitution

Development in the law - Criminal Conspiracy,
72 Hapv. L. Rev. 920, 975-76 (1959)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

= = = = =

JOSEPHINE GUAGLIERI,

Petitioner,

VS.

THE STATE OF NEW JERSEY,

Respondent

= = = = = = = = = =

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY - APPELLATE DIVISION

Petitioner, Josephine Guaglieri, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Superior Court of New Jersey - Appellate Division entered on April 6, 1992.

OPINION BELOW

The opinion of the court of appeals is attached as Appendix C. The decision was entered on April 6, 1992. A petition for certification was denied by the Supreme Court of New Jersey with court costs on June 12, 1992 and is attached as Appendix A

JURISDICTION

If any government agency, in this case a trial court and county superior court are willfully and wrongfully participants in a conspiracy to commit fraud and obstruct justice, and, a state court of appeals does not defend the individual against whom the injustice has

been committed, the Supreme Court of the United States has the jurisdiction to hear the case. Petition for certification was denied by the Supreme Court of New Jersey (Appendix A) The jurisdiction of this court is invoked under title 28 United States Code 1254 (1).

STATUTORY PROVISIONS INVOLVED

18 United States Code 1001 provides:

> ''Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.''

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment of the United States onstitution provides:

No person shall be deprived of life, iberty or property, without due process of law, or shall private property be taken from an ndividual. Petitioner was confronted in a hopping mall and questioned about her coat. he was accused by Jack Donnelly, the security uard employed by the department store of shop- ifting the coat from the premises. The police fficer summoned to the scene S. D. Clark of ockaway Township Police Department turned

petitioner's coat over to the accuser. Petitioner was then taken to the police station and was repeatedly harassed by the officer for a confession. Petitioner could not get it through to the officer that it was her coat she was accused of taking. This was an accusation handled improperly by the officer, who should have held petitioner's coat as evidence when he was summoned to the scene of the alleged crime, instead of blindly obliging te accuser, inasmuchas there was no confession of a crime committed by petitioner.

In the complaint W 797094, the description given to the police officer by Jack Donnelly, the accuser was that the coat was a LaNouvell Renaissance leather coat. The police report states the color as brown. Petitioner's coat was an Andrew Marc black coat. The label in the coat so proves this fact and the color speaks for itself. The coat they seized and claimed to have been shoplifted did not conform to the description given by the accuser. The charges should have been dismissed based on this discrepancy alone and petitioner should have recovered her property. Negligience and the seizing of petitioner's personal property by the accuser has deprived her of her fifth amendment rights.

(emphasis added to point out discrepancy)

STATEMENT OF FACTS

On November 6, 1989, Jack Donnelly, a security guard employed with a department store, stated he observed petitioner, Josephine Guaglieri, on a store camera shoplift a brown LaNouvell Renaissance leather coat from the department store. Josephine Guaglieri was approached in the shopping mall of Rockaway Township, questioned about her Andrew Marc black leather coat, was arrested based on the security guard's observation and convicted with no evidence to support this observation.

In this case, the State of New Jersey vs. Josephine Guaglieri, what we are dealing with is a security guard, namely Jack Donnelly, too proud to admit he made a serious blunder. Rather than admit his mistake, it was easier for him to fabricate his testimony in order to save face. But he knew he needed some clout to back up his story, inasmuchas there were no legitimate witnesses, such as salespeople of the department store, or shoppers, no videotape, and, no instrument with fingerprints supposedly having removed a sensamatic tag, to substantiate his story. Therefore, in enters Patrick Zazzaro, a false witness, his sidekick to back him up. Two security guards who have willfully perjured themselves without conscience. Two lying tongues and hands that have shed innocent blood. There is no evidence in this case to support the accusation or justify conviction and the seizing of petitioner's property.

(emphasis added to pertinent matter)

REASONS FOR GRANTING OF WRIT

1. Reasons for granting of writ is carefully outlined and summed up by petitioner in the questions presented. However, making further comment with regard to the Appellate Court's opinion (Appendix C pg. 3), the court states the need for further changes of venue as being wholly without merit. Be advised, no assumption is being made when petitioner states the judges in these small townships have ''special interests'' in the department store and in other businesses in the Rockaway Township Mall, some being stockholders, etc. Due to this fact, obstruction of justice and political bribery ensued. It was quite apparent to petitioner both the trial court judge and superior court judge were a part of this scam. Political favors are not uncommon in small towns and within government in general. There is no doubt the weight of the system in Morris County did gear itself against petitioner and did band together to oppose her. Had petitioner received a change of venue to Elizabeth in Union County as suggested by her, she would have been guaranteed a fair trial. In fact this case would have never gotten to trial, due to lack of evidence and inaccuracies it would have been dismissed. Mr. Donnelly deliberately committed fraud when he stated ''Andrew Marc was the designer, but they had I don't know, Renaissance or whatever it was, was the make or the model of the coat or something like that'', in an effort to cover up his mistake. His fabricated testimony cannot negate the fact,

petitioner's coat was black not brown and an Andrew Marc not a LaNouvelle Renaissance as stated in the complaint and police report as follows: 18 U.S.C. 1001

COMPLAINT DESCRIPTION

''Defendant did shoplift from the Lord and Taylor Store located at the Rockaway Townsquare Mall, one LaNouvall Renaissance leather coat valued at $980.00.''

DETAILS GIVEN TO POLICE
BY ACCUSER AS SO REPORTED

''Responded to Lord and Taylor on a reported shoplifter. Upon arrival spoke with security Det. Donnelly, who explained how actor later to be identified as Josephine Guaglieri of 71 Springbrook Road, LIvingston, DOB 3-10-41, took leather coat off rack and left store premises. According to Det. Donnelly actor was watched for an extended period of time via store camera system. Actor appeared very suspicious and was observed leaving premises with a short waist length dark leather jacket and returning a short time later with no jacket on. She then proceeded to the rack of long brown leather coats and dropped the stripped leather coat over her arm and left store premesis. Actor was then detained by store security until police arrived. Ms. Guaglieri was then placed under arrest by undersigned (police officer S.D. Clark) and transported to HQ for processing.

Dark brown leather coat (full length) valued at $980.00, recovered and returned to security.

Defendants car keys were retained by P.O. S. Skrinak and placed into evidence for safe keeping.''

(emphasis added to pertinent matter pointing to discrepancy in description, and, no follow up of investigation re: short waist jacket.)

There are no markings in petitioner's coat to sub-

stantiate Mr. Donnellys' statement and testimony. The burden of proof rested on the state. Is this not a miscarriage of justice, and, is there not a veil of blindness on the eyes of the judges in the Appellate Division? In their opinion Appendix C, they misconstrued the true issue. (pg. 2 lines 12-17). In endeavoring to prove to the court the coat belonged to petitioner, she points to a tear in the lower left seam of her coat, as part of the description. The security guard Jack Donnelly was then recalled to the stand to oppose and discredit petitioner's testimony by stating the sensamatic tag was located right where the tear was. Research will prove sensamatic tags are placed randomly on garments, and, when removed a small round hole remains in the garment. Such conclusions on the part of the Appellate Court judges are wholly without merit and further justifies the granting of writ.

I recognize that certiorari is rarely granted, but the record here clearly shows a miscarriage of justice, a legal system of not one of whom has been found to be impartial or an unwilling participant of fraud, conspiracy to commit fraud and obstruct justice, and, departure from governing legal principles, from which the trial court so did.

By seeking certiorari, petitioner seeks vindication of this gross injustice.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dated: Sept. 1, 1992

Josephine Guaglieri, Pro Se

Supreme Court of New Jersey
C-1000 September Term 1991
35,087

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOSEPHINE GUAGLIERI,

Defendant-Petitioner.

ON PETITION FOR CERTIFICATION

FILED
June 12, 1992
Stephen Townsend,
Clerk

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-3517-90T1 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 9th day of June, 1992.

Stephen Townsend
CLERK OF THE SUPREME COURT

APPENDIX A

Received and Filed
Deputy Clerk
Superior Court
March 19 9:08 AM '91
Morris County Clerk

SUPERIOR COURT, MORRIS COUNTY
LAW DIVISION
APP.No. 361-89

State of New Jersey
Plaintiff

vs.

Josephine Guaglieri
Defendant

JUDGMENT ON APPEAL

This matter having been heard before the Court on the 8th day of March, 1991, in the presence of Gerald P. Higham, Deputy Attorney General pursuant to R. 3:23-9, and Pro Se attorney for the defendant, and the Court having read the transcript of the Municipal Court of the Borough of Chatham and having heard the oral arguments of counsel and for good cause shown;

It is ADJUDGED that the defendant is Guilty of a violation of Shoplifting|2C:20-11b

IT is ORDERED on this 12 day of March, 1991 that

Ms. Guaglieri is found guilty.
Ten (10) day sentence vacated. Probation remains 6|26|90 - 7|26|91.
$400.00 Fine and $30.00VCCB. remains and is to be paid in Chatham Borough.
Two (2) week stay granted pending Appeal.

Daniel R. Coburn, J.S.C.

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3517-90T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOSEPHINE GUAGLIERI,

Defendant-Appellant.

Submitted: March 23, 1992 -
Decided: April 6, 1992

Before Judges R. S. Cohen and Kestin.

On appeal from the Superior Court,
Law Division, Morris County.

Appellant, Josephine Guaglieri,
submitted a brief pro se.

Robert J. Del Tufo, Attorney General,
attorney for respondent, (Arthur S. Safir,
Deputy Attorney General, of counsel and
on the letter brief.)

PER CURIAM

The municipal court judge found defendant guilty of shoplifting, N.J.S.A. 2C:20-11b. He imposed a ten-day suspended sentence along with a $400.00 fine, $25.00 in court costs and a VCCB penalty of $30. Defendant appealed and was found guilty in the Superior Court, Law Division after a trial de novo on the record. R. 3:23-8

The conviction was based upon the detailed testimony of two store detectives. Defendant was closely observed by the detectives after she was seen acting suspiciously near a rack of coats. After taking one coat to a dressing room and then returning it to its rack, defendant left the store only to return without the outer garment which she had been wearing when first observed. After some wandering about, defendant again took the coat from the rack, draped it over her arm, and left the store without tendering payment, whereupon she was apprehended. The detectives testified at trial that both the price tag and the sensamatic security tag had been removed from the coat. The price tag was found on the floor beneath the rack and there was a tear where the security tag would have been attached.

Defendant denied the allegations. She asserted that she had purchased the coat in New York City a month earlier.

We have carefully reviewed the transcript of the municipal court proceedings as well as the findings of fact and conclusions of law set forth by the Law Division judge in his oral decision rendered on March 8, 1991. We affirm. The findings and conclusions below are adequately supported by the evidence. State v. Johnson, 42 N.J. 146, 161-164 (1964). On issues of fact presented with contradictory assertions, the judge was required to decide whose testimony was more credible. He chose to believe the two store detectives. Such a determination is not to be second-guessed on appeal where there is sufficient

evidence in the record to support it. Rova Farms Resort v. Investors Ins. Co., 65 N.J. 474, 484 (1974).

Defendant's arguments concerning the need for further changes of venue, even to another county, are wholly without merit. The defendant received a fair trial in the municipal court and a fair trial de novo on the record in the Law Division.

Affirmed.

R. Emille Cox
Clerk